REMARKS

This amendment is responsive to the Office Action of 18 November 2002 and the personal interview with the Examiner on 13 November 2002.

The applicant wishes to thank Examiner Watkins for the courtesy of a personal interview on 13 November 2002.

The Office Action

Claims 36-46 stand rejected under 35 U.S.C. § 103 as being unpatentable over Heilman (AU 27337), in view of Konger (US 3,760,154), further in view of Anderson (US 5,113,479). The rejection interprets Konger as using infrared radiant heat directly on the overhanging edge of a transparent shrink wrap film ... to be shrunk.

The Objection to Claim 36

Claim 36 has been amended to insert the phrase suggested by the Examiner in paragraph 2 of the detailed Office Action.

Claims 36-46 Distinguish Patentably Over the References of Record

As set forth in the enclosed Declaration of Dr. James Mallmann, Director of the Milwaukee School of Engineering Center for Photonics and Applied Optics, the film of the Konger patent does not absorb radiant energy. That is, the film of Konger will not heat and shrink as the result of directly absorbing radiant energy. Rather, the radiant energy passes through the film of Konger.

With the submission of this expert Declaration showing that Konger, does not in fact, function in the way that the Examiner was interpreting Konger, it is submitted that claims 36 and 41, and claims 37-40 and 42-45 dependent therefrom, distinguish patentably and unobviously over the references of record.

Double-Patenting

The applicant requests that the double-patenting issue be held in abeyance until all claims are otherwise in condition for allowance. U.S. Patent 5,993,942 is a continuation-in-part of U.S. Application Serial No. 08/638,160. The present application is a continuation of this same U.S. Application Serial No. 08/638,160. Accordingly, there is an overlap in the disclosed subject matter. However, the applicant cannot evaluate whether the patent that will eventually issue on this application will have claims that would constitute double-patenting with the earlier patent until a determination of the allowable claims in this application is made. For example, it is possible that the claims of the present application might come to be significantly altered before allowance. However, once a Terminal Disclaimer is filed, it cannot be withdrawn if the claims evolve so significantly that there is no double-patenting issue.

Secondly, the patent which will issue on the present application and U.S. Patent 5,993,942 will both expire 20 years from the same effective filing date, i.e., they already have the same expiration date. Neither patent will extend beyond the other, with or without a Terminal Disclaimer. Accordingly, it is submitted that a Terminal Disclaimer is unnecessary.

The Examiner is invited to telephone the undersigned to discuss this issue in greater detail when the application is otherwise in condition for allowance.

CONCLUSION

For the reasons set forth above, it is submitted that claims 36-46 distinguish patentably and unobviously over the references of record and are otherwise in condition for allowance. An early allowance of all claims is requested.

Respectfully submitted,

FAY, SHARPE, FAGAN,
MINNICH & McKEE, LLP

Thomas E. Kocovsky Jr.
Reg. No. 28,383
1100 Superior Ave.
Seventh Floor
Cleveland, OH 44114-2518
(216)-861-5582

CERTIFICATE OF MAILING

I hereby certify that this **AMENDMENT and DECLARATION UNDER 37 C.F.R. § 1.132** in connection with U.S. Patent Application Serial No. 08/977,374 are being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop: _____, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22213-1450, on this 14th day of May, 2003.

By: Hilary M. McNulty